IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7346 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHYAMLAL GANIRAM SHAH

Versus

ASSISTANT CIVIL SUPPLY CONTROLLER

Appearance:

1. Special Civil Application No. 7346 of 1997

MR BA SURTI for Petitioner No. 1

MS ARHANA RAVAL AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 29/04/2004

ORAL JUDGEMENT

1. The petitioner has preferred this writ petition under Article 227 of the Constitution of India against

the revisional order dated 24th September, 1997 passed by the respondent no. 3.

2. The bone of the contentions raised by the petitioner in the memo of the petition is that on the basis of the affidavits of 7 ration card holders it is beyond reasonable doubt that the petitioner in fact had sold kerosene to them but the entries were not made in the ration cards of the said 7 ration card holders. Had this fact been considered properly all the authorities below namely; (i) the Assistant Civil Supply Controller, Ahmedabad, (ii) Civil Supply Controller, Ahmedabad and (iii) Deputy Secretary, Civil Supply Department, Gandhinagar, could not have passed the orders which they have passed against the petitioner whereby the licence issued to the petitioner for sale of kerosene has been revoked and the deposit amount of the petitioner was forfeited.

3. It is contended by the learned advocate for the petitioner that the show cause notice dated 2nd November, 1996 was issued by the respondents whereby it was referred that on 19th September, 1996 it was noticed by the Officers of the Food and Civil Supply Department that the petitioner had fictitiously prepared the bills for sale of kerosene for two ration card-holders for the quantity of 20 Ltrs. of kerosene and thereby he has misappropriated the said stock of kerosene. Similarly, the petitioner has not sold 100 ltrs. of kerosene to 7 ration card-holders nor he has recorded in the ration-card of 7 ration card-holders and has fictitiously prepared the bills in the names of those 7 ration card-holders. The names of those 7 ration card-holders, bill number, date and quantity of kerosene has been given in the aforesaid show cause notice dated 2nd November,1996.

4. Learned counsel for the petitioner has contended that as per petitioner's reply dated 10th November, 1996 to the show cause notice, he was ready and willing to keep all 7 ration card-holders referred in the show cause notice, present before the concerned authority.

5. Personal hearing was afforded by the first authority namely Deputy Food and Civil Supply Controller, Ahmedabad and the petitioner had remained present before the first authority on 14th November, 1996. It is referred in the order of the first authority passed on 18th December, 1996 (Annexure-A to the memo of the petition) to the effect that the petitioner has reiterated what is stated in the reply to the show cause

notice. No further arguments were canvased by the petitioner than what is stated in his reply to the show cause notice before the first authority. The first authority below has arrived at a conclusion that there were no entries in the ration cards of 7 ration card-holders. It is admitted by the petitioner in his reply that through oversight by mistake he has forgotten to make entry in the ration cards of 7 ration card-holders. The said first adjudicating authority has noted at page No. 3 of the order that he has carefully gone through the papers of the inquiry, the statements of 7 ration card-holders and originals of the said ration cards and has arrived at the conclusion that there cannot be mistake committed by the petitioner of not carrying out the entry in the ration cards for sale of 100 ltrs. of kerosene to 7 ration card-holders. He has also arrived at the conclusion that there is breach of Clauses 23 and 24 of the Essential Articles (Licence, Control and Stock Declaration) Order, 1981, (hereinafter referred to as "the Order,1981") enacted in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955. Said Clause 23 and 24 read as follows :

"Clause 23 : Maintenance of register of a accounts by dealer or producer -

(1) Every dealer or producer shall maintain register of daily stock of essential article showing correctly opening stock for the day, stock received during the day, the place from where and source from where received and stock delivered or otherwise removed and the closing of such essential articles in which he carries on the business as dealer or producer.

(2) The dealer or, as the case may be producer, shall complete as far as possible his accounts for the day immediately after closing his business for the day and shall in any case complete the same before opening of the premises the next day.

Clause 24 : Power to issue directions to dealer or producer :

(1) The State Government, the Director of Civil Supplies, the Director of Food, the Collector of district or any licensing authority may in accordance with the provisions of this order and for ensuring

fair and equitable distribution of essential article by general or special order, issue to any dealer or producer or class of dealers or producers such directions regarding maintenance of accounts, maintenance of stock, storage, sale submission of returns, furnishing information, display of prices, issuance of invoice or cash memo, weighment, disposal, delivery or distribution of any essential article as it or he may deem fit.

(2) Every dealer or producer to whom any direction is issued under sub-clause (1) shall comply with such direction.

6. Similarly, the first authority had arrived at the conclusion that there is breach licence conditions no. 5 and 9, which read as follows :

"5 - Notwithstanding anything contained in Clause-15, every person not being a licence holder who has on the date of the notification fixing the limits of stocks or any time thereafter in his possession or under his control any essential article in exercise of the limits which may by a notification in the official gazette be fixed by the State Government shall within three days after the issue of such notification or within two days from any date thereafter when the stocks exceeds such limits, make a declaration in writing to the concerned licencing authority showing therein his name, address and quantity of each kind of essential article in his possession or under his control :

Provided that such person shall not have in his possession or under his control stock of any essential article in quantity exceeding such limits beyond a period of fifteen days after such declaration without obtaining the permission therefor from the licencing authority.

Provided further that where the licencing authority grants under the first proviso permission to a person to have in his possession or under his control, stock of any essential article exceeding the limits of aforesaid, such person shall make on or before the fifth day of every month a declaration of stock in writing to

the licencing authority showing therein his name, address, and the quantity of essential article held by him.

Provided also that such person shall abide by such directions as the State Government, the Director of Civil Supplies, Gujarat State, the Director of Food, Gujarat State, the Collector of the district, the Food and Civil Supplies Controller, Ahmedabad City or the licencing authority may, by general or special order, issue for the disposals of the stock of essential article in the excess of the aforesaid quantity in his possession or under his control.

(9) Where no price for sale of an essential article is fixed under order made under the Act or under any law for the time being in force, the licence holder shall not charge in respect of sale of such essential article made by him a margin of profit in excess of -

(a) subject to any margin fixed paragraph (b), any maximum rate of margin fixed by a representative body of dealers or, as the case may be, of procedures for the locality in consultation with the licencing authority, or as the case may be, the State Government; or

(b) any rate of margin fixed by the State Government.

7. It may be noted that no further evidence was led by the petitioner before the first authority i.e. the Deputy Food and Civil Supply Controller, Ahmedabad. No witness and no additional documentary evidence was ever produced or demanded by the petitioner. After the order of the first authority which is dated 18th December, 1996 it is alleged by the petitioner that those 7 ration card-holders have given the affidavits to the effect that all of them had obtained kerosene from the petitioner as per the bills. All these affidavits are dated 26th December, 1996. Nowhere it is mentioned in the memo of the petition that as to how these affidavits have come in possession of the petitioner and how the deponents of the said affidavits were inspired and prompted to file the said affidavits and that too, all 7 ration card-holders simultaneously. All the said affidavits are dated 26th December,1996 and all 7 ration card-holders had given the

said affidavits at the residence of the petitioner. Be that as it may, subsequently the petitioner had preferred an appeal under Clause - 11 of the Order, 1981 before the Food and Civil Supply Controller. The order dated 28th February, 1997 passed by the Appellate Authority namely the Food and Civil Supply Controller, is annexed at Annexure-B to the memo of the petition. In the appeal those aforesaid affidavits of 7 card-holders were produced. The appeal was dismissed by the Food and Civil Supply Controller vide order dated 28th February, 1997 and the Appellate Authority was of the opinion that the affidavits are afterthought. There were no entry in ration cards of 7 card-holders and in the statements of 7 ration card-holders it was mentioned by them that they have not received quantity of kerosene for which fictitious bills were prepared by the petitioner. All the affidavits prepared after the order of the first adjudication were not accepted by the Appellate Authority and has dismissed the appeal of the petitioner.

8. The petitioner preferred revision application under Clause-12 of the Order,1981 before the respondent no. 3. By his revisional order dated 24th September, while rejecting the said Revision Application, the Revisional Authority - respondent no. 3 has arrived at the conclusion that 100 ltrs.. of kerosene was not sold to 7 ration card-holders by the petitioner and the petitioner has wrongly prepared the bills in their names and thus the petitioner has disposed of quantity of 100 ltrs. kerosene unauthorisedly and therefore the order of revocation of licence was passed along with the order of forfeiture of the deposit amount of the petitioner.

9. The present petition is preferred under Article 227 of the Constitution of India. All the authorities below namely (i) The Deputy Food and Civil Supply Controller, Ahmedabad, (ii) The Food and Civil Supply Controller, Ahmedabad City and (iii) The Secretary, Food and Civil Supply Department, had arrived at the same conclusion so far as the important facts are concerned namely (i) the petitioner has not sold kerosene to 7 ration card-holders, (ii) there were no entries in all said ration cards made the petitioner for sale of 100 ltrs. of kerosene and (iii) the petitioner has prepared fictitious bills in the names of 7 ration card-holders and thereby the petitioner has unauthorisedly disposed of quantity of 100 ltrs. of kerosene.

10. I have carefully gone through the aforesaid three orders passed by the authorities below and looking to the contentions of the petitioner even before this Court,

there is no need to interfere with the orders passed by the authorities below. The main contention of the petitioner is regarding the affidavits of 7 ration card-holders which has been narrated hereinabove is creation of the petitioner after the order was passed by the first authority on 18th December, 1996 and the affidavits of 7 ration card-holders are dated 26th December, 1996. Nowhere it is stated that what has prompted to all 7 ration card-holders to file their affidavits on the same day and to give the same at the residence of the petitioner. The petitioner has never led any evidence before the Deputy Food and Civil Supply Controller when personal hearing was given on 14th November,1996 as referred to at internal page No.2 of the order passed by the Deputy Food and Civil Supply Controller, Ahmedabad. Before the first authority nothing more was stated by the petitioner than what was stated in the reply to show cause notice which is not annexed with the memo of the petition, but the faint and illegible copy of which is produced at the time of hearing by the learned advocate for the petitioner, which reflects that the petitioner was ready and willing to keep 7 ration card-holders present before the first adjudicating authority. But the facts remains that no evidence was laid. no documents were demanded, no affidavit was produced by the petitioner before the first adjudicating authority. As noted hereinabove subsequently the affidavits dated 26th December,1996 are given in the hands of the petitioner by 7 ration card holders without any explanation as to what has inspired, all together all 7 ration card-holders to swear the affidavits and that too for the petitioner.

11. Rightly, these affidavits were not considered, neither by the Appellate Authority i.e. the Food and Civil Supply Controller, Ahmedabad nor by the Revisional Authority i.e. the Secretary, Food and Civil Supply Department - respondent no. 3. I have also carefully gone through the affidavits filed by 7 ration card-holders which are annexed with the memo of the petitioner but they are of no use to the petitioner and as per my opinion this is nothing but afterthought of the petitioner.If we closely look to the affidavits which dated 26th December, 1996, all are similar - word to word, line to line and sentence to sentence. I have no hesitation in coming to a conclusion that all these affidavits are nothing but creation of the petitioner after the order was passed by the first adjudicating authority namely the Deputy Food and Civil Supply Controller, Ahmedabad and his order.

12. Limited are the powers under Article 227 of Constitution of India, especially when there is consistency in the orders of the authorities below. The facts are established after opportunity ofbeing heard was given. The conclusions arrived at by the authorities below are correct and in consonance with the provisions of the Gujarat Essential Articles (Licensing, Control and Stock Declaration) Order, 1981.

13. Learned advocate for the petitioner relied upon the judgment of this Court in the case of Kiran Oil Industries Vs. District Collector, Jamnagar, reported in 1996 (2) G.L.R. 127. Looking to the facts of the present case, the said judgment is not useful to the petitioner. In the said judgment, before confiscation of the commodity under the Essential Commodities Act, 1955, the authority is required to disclose to the dealer the material on which it seeks to rely. It was vehemently contended by the learned advocate Mr. Surati for the petitioner, for the first time before this Court that the statements of 7 ration card-holders upon which the authority was relying were never given to the petitioner in the year 1996. It may be noted, at this stage, that the opportunity of personal hearing was afforded by the first adjudicating authority and show cause notice was given by the respondents of which the reply was also given by the petitioner. Neither in the reply to the show cause notice nor at the time of personal hearing before the first adjudicating authority ever the petitioner has raised this contention that he was in need of the statements of 7 ration card-holders. Even before the Appellate Authority the statements of 7 card holders were never demanded by the petitioner. Nowhere grievance was ventilated by the petitioner even at the time of hearing of the revision application that the statement of 7 ration card-holders have not been supplied to the petitioner. Therefore, the contention of learned advocate Mr. Surati that the statements of 7 ration card-holders ought to have been given to the petitioner by the authority is not accepted by this Court. On the contrary, the petitioner has accepted in his reply to the show cause notice the fact that there are no entries in the ration cards of 7 ration card-holders about sale of kerosene to the tune of 100 ltrs.

14. Mr. Surati learned advocate for the petitioner submitted that the aforesaid judgment of this Court is helpful to the petitioner for the reason that the respondent authority has to prove this case beyond reasonable doubt and from the aforesaid facts and despite the orders passed by three authorities, the case of the

petitioner is not proved beyond reasonable doubt. The facts of the judgment cited by the learned advocate for the petitioner are not helpful to the petitioner. On the contrary, the facts established in the impugned case are absolutely different and manifest. There were no entries in the ration card of 7 ration card holders for quite large quantity of 100 ltrs. of kerosene. The first adjudication authority has decided the matter on 18th December, 1996 and personal hearing was given to the petitioner but no evidence was ever produced by the petitioner. Abruptly the affidavits were given in the hands of the petitioner on 26th December, 1996 from 7 ration card-holders and all of them have obtained kerosene from the petitioner. Therefore, with the memo of the appeal, all these affidavits are annexed. Thus, the behaviour of the petitioner speaks volumineous about his attitude towards the case. Similarly, second judgment of this Court in the case of Devikadevi wife of Premjibhai Ruparel V. State of Gujarat and Anr, reported in 1983 (1) G.L.R. 215 is of no help to the petitioner as the facts of the impugned case are different.

15. For the foregoing reasons, this petition fails and is accordingly dismissed. Rule is discharged with no order as to costs. Interim relief granted by this Court stands vacated.

16. Learned advocate for the petitioner requested this Court to continue interim relief granted by this Court for approaching higher forum. The request is rejected.

(D.N. Patel, J.)

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